

## RIGHT-OF-USE AGREEMENT

This Right-of-Use Agreement is between the City of Newport, an Oregon municipal corporation (City) and H. William Frank, (Frank).

### RECITALS

A. City owns and operates the Newport Municipal Airport and owns hangar and office space on the property.

B. Frank wishes to use a portion of the main hangar from City and City is willing to allow the use of the requested area to Frank.

### TERMS OF AGREEMENT

1. Basic Terms. City agrees to allow the use of space for one airplane in the common hangar at the FBO at the Newport Municipal Airport to Frank at an initial rate of \$240 per month, payable on the first of each month. The rate may be adjusted as provided in Section 3. Frank agrees to timely pay the required rent. The City reserves the right to utilize all means possible, including use of a lien, for the collection of non-payment and may refuse to maneuver Frank's plane in or out of the common hangar until payment is made. This agreement is effective on the date signed, and shall remain in effect for one year, unless sooner terminated as provided in this agreement.
2. Extension. Frank shall have the option to renew this Agreement for successive one-year terms. Frank must provide written notice of intent to renew at least 45 calendar days prior to the expiration of the term. City shall have 15 calendar days to inform Frank of the monthly rental rate for the renewed term, and Frank shall have 30 days to either accept the revised rental rate and proceed

with the extension, or cancel the extension.

3. Annual Adjustment. The monthly agreement fee may be increased in the City's sole discretion effective January 1 of each year to reflect the percentage increase, if any, in the All Urban Consumer's Price Index for the Portland Metropolitan Area.

4. New Term Adjustment. The rental rate for any renewal period shall be based upon the rental market value of the space rented. In determining the rental market value, the City shall consider the amount charged by comparably sized airports, taking into account local economic circumstances.

5. Taxes. Frank shall pay all taxes, real or personal, attributed to any items of personal property located upon the premises during the term of this Agreement. Frank shall hold City harmless and indemnify City from any tax obligations.

6. Use of Space.

- a. The common hangar space will be available to Frank for the parking of one airplane similar in size to a Piper Aerostar.
- b. Frank may use the space for routine maintenance such as oil changes to the airplane, but shall not use the space for major airplane repairs including engine or skin replacement.
- c. When Frank is not using the hangar space, the City may use the space for its own purposes, including renting it for transient airplane storage as long as the City's use does not impact Frank's ability to store an airplane. Frank shall not be entitled to any revenue the City receives for the use of the common hangar space when the City uses the space for other purposes.

- d. The City retains the right to move, as necessary, Frank's airplane within the common hangar to accommodate other airplanes or to use the common hangar for other purposes.
- e. Frank shall have a non-exclusive right of ingress and egress to the common hangar during normal business hours. Upon the request by Frank for ingress or egress of the common hangar during other than normal working hours, the City will provide its best effort to accommodate the request. City service for after normal working hours shall be charged at \$75 per hour.

7. Subrogation. Frank may not subrogate use of the hangar space.

8. Liability/Insurance. Frank agrees to release, hold harmless, indemnify, and defend City from any and all liability resulting from the use of the hangar premises or the condition of the hangar premises. Frank shall specifically save and hold harmless, indemnify, and defend City, its officers, agents, and employees, from and against any and all liability arising out of or in connection with acts or omissions to act by Frank, Frank's guests, agents, employees, or invitees on or about the demised premises, as well as airport premises generally, whether arising out of negligent or intentional acts or omissions to act. This indemnification and hold harmless provision shall extend to all claims, losses, damages, causes of action, or suits in which the City is named in a suit or claimed by third parties to be responsible in whole or in part for acts arising out of the Frank's or Frank's agents acts or omissions to act, except, and to the extent caused or contributed to by the negligence of City, its employees, or agents.

Frank shall carry public liability insurance covering the risks associated with Frank's use of the premises in the

minimum amount of \$3,000,000 Combined Single Limit (CSL). All insurance shall be carried with a responsible company, and the City shall be named as an additional insured.

9. Inspection. City shall have the right to inspect the hangar at any time.

10. Regulations. Frank agrees to comply with and support applicable airport security regulations. Frank is responsible for compliance with regulations by its employees, agents, customers, and guests. Security of the aircraft shall be the responsibility of the Frank, and City shall not be responsible for the aircraft. Frank assumes all risk of theft, vandalism, or other causes of damage, whether due to acts or omissions to act by third parties or acts of nature.

11. Relocation or Termination for Airport Development. In the event that the City determines that the hangar area is required by City for airport development, City shall provide the Frank with alternate space if available, or if no acceptable alternative space is available, may terminate the agreement by providing a 30 day written notice.

12. Termination. This Agreement may be terminated for the following material breaches by Frank:

- a. Failure to pay rent by the 15<sup>th</sup> of any month.
- b. Any subrogation of the agreement.
- c. Any other breach that is not cured within 15 days of notice of the breach. The City shall extend the 15-day cure period if Frank has diligently started to cure the breach, but may terminate the extension at any time if Frank fails to diligently attempt to cure the breach.

Frank's liability to City for rent and damages shall survive termination. In the event of termination, Frank shall

vacate the hangar immediately, remove Frank's personal property, and leave the hangar in the condition it was at the start of this agreement, excepting ordinary wear and tear.

As an additional cumulative remedy, City may take possession of the premises, and remove any person or property by legal action or by self help with the use of legal force and without being deemed guilty of trespass or other wrongful act.

In the event of termination for material breach of this agreement, City shall be entitled to recover immediately, without waiting for the due date for payment of any future monthly fee or until the date fixed for expiration of the User Agreement term, the following amounts as damages:

a. The loss of rental income from the date of material breach until a new Agreement has been, or could have been, secured with reasonable effort or until the end of the term, whichever is first.

b. The reasonable costs of cleanup, or any other expense occasioned by Frank's failure to quit the premises upon termination and to leave them in the condition which Frank acquired the hangar, less ordinary wear and tear. Costs may include attorney's fees, court costs, broker commissions, and advertising costs.

The foregoing remedies shall be in addition to and shall not exclude any other remedy available to City under applicable Oregon law.

**13. Attorney's Fees.** If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney's fees, including attorney's fees on appeal.

14. No Third Party Beneficiaries. This Agreement is for the benefit of the parties and not for the benefit of any third party, and City shall incur no liability to any third party by reason of any failure to enforce compliance with any provision of this agreement.

15. Notice. Notice shall be deemed given when actually delivered or when deposited in the U.S. Mail and addressed as follows:

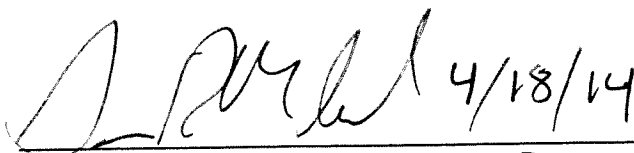
To Frank:

H. William Frank  
1014 Pheasant Trail  
Worland, Wyoming 82401  
(715.610.1025 ☎)  
aeromaxllc@gmail.com

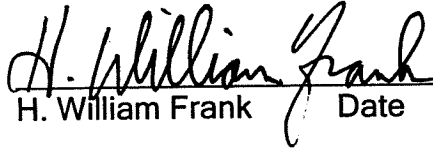
To City:

City of Newport  
Attention: Spencer R. Nebel, City Manager  
169 SW Coast Highway  
Newport, Oregon 97365  
(541.574.0603 ☎)  
s.nebel@newportoregon.gov

Or such other address as may be specified from time to time by either party in writing.

Handwritten signature of Spencer R. Nebel in black ink, followed by the date 4/18/14.

Spencer R. Nebel, City Manager      Date

 4/13/14  
H. William Frank Date

#### GUARANTEE

In consideration of the granting of the Agreement by City to Frank, the Guarantor unconditionally and without limitation guarantees performance by Frank; waives notice of default by Frank; waives notice of any amendments to this Agreement and agrees to be bound by such amendments; in the event of default by Frank, waives notice of default and/or demand by City; agrees that this Guarantee may be enforced against the undersigned Guarantor without first having terminated the agreement or having initiated legal proceedings against Guarantor, agrees that the prevailing party shall be entitled to recover reasonable attorney fees from the non-prevailing party at trial and on appeal.